

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN L. EDMONDS, INDIVIDUALLY AND AS A MANAGING  
GENERAL PARTNER OF FIFTH AND 106TH STREET HOUSING  
COMPANY, INC., LOGAN PLAZA ASSOCIATES, LP,  
CHARLES H. ASSOCIATES a/k/a CHARLES H. HILL  
ASSOCIATES, LP AND AS A LIMITED PARTNER  
OF CHURCH HOME ASSOCIATES, LP,  
Plaintiffs;

-against-

ROBERT W. SEAVEY, INDIVIDUALLY AND AS A GENERAL  
PARTNER OF FIFTH AND 106TH STREET ASSOCIATES, LP,  
LOGAN PLAZA ASSOCIATES, LP, CHARLES HILL ASSOCIATES,  
CHARLES HILL ASSOCIATES, LP AND AS A LIMITED PARTNER  
OF CHURCH HOME ASSOCIATES, LP; PHYLLIS M. SEAVEY  
INDIVIDUALLY AND AS OWNER, MANAGER AND MEMBER OF  
DALTON MANAGEMENT COMPANY LLC; AVERY B. SEAVEY,  
INDIVIDUALLY AND AS A GENERAL PARTNER OF LOGAN PLAZA  
ASSOCIATES, LP, CHURCH HOME ASSOCIATES AND OWNER OF  
DALTON MANAGEMENT COMPANY, LLC; NEALE B. SEAVEY,  
INDIVIDUALLY AND AS OWNER, MANAGER AND MEMBER OF  
DALTON MANAGEMENT COMPANY, LLC; AND RONALD DAWLEY  
AS CHIEF EXECUTIVE OFFICER OF DALTON MANAGEMENT  
COMPANY, LLC; DALTON MANAGEMENT COMPANY, LLC, THE  
SEAVEY ORGANIZATION, and MARKS PANETH & SHRON,  
Auditors,

Defendants.

----- x  
71 Maple Street  
Brooklyn, New York

WILLIAM H. JENNINGS

February 3, 2008  
10:31 a.m.

DEPOSITION of MARKS PANETH & SHRON, a Defendant  
in the above-entitled action, by WILLIAM H.  
JENNINGS, held at the above time and place, pursuant  
to Order, taken before Sima D. Lowy, a reporter and  
Notary Public within and for the State of New York.

3  
A p p e a r a n c e s :

M. DOUGLAS HAYWOODE, ESQ.  
Attorney for Plaintiffs  
71 Maple Street  
Brooklyn, New York 11225

HERRICK, FEINSTEIN, LLP  
Attorneys for Defendants  
2 Park Avenue  
New York, New York 10016  
BY: M. DARREN TRAUB, ESQ.

WILSON, ELSEY, MOSKOWITZ, EDELMAN & DICKER, LLP  
Attorneys for Defendants  
MARKS PANETH & SHRON  
3 Gannett Drive  
White Plains, New York 10604  
BY: WILLIAM J. KELLY, ESQ.

ALSO PRESENT:

Orley Cameron  
Sandra Griffiths  
Adam Pryce  
John Edmonds

4  
S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and  
between the attorneys for the respective  
parties herein, that filing, sealing and  
certification be and the same are hereby  
waived.

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to the form of the  
question shall be reserved to the time of the  
trial.

IT IS FURTHER STIPULATED AND AGREED that  
the within deposition may be signed and sworn  
to before any officer authorized to administer  
an oath, with the same force and effect as if  
signed and sworn to before the Court.

1  
2 W I L L I A M H J E N N I N G S, the  
3 witness herein, having first been  
4 duly sworn by a Notary Public of the  
5 State of New York, was examined and  
6 testified as follows:  
7 EXAMINATION BY  
8 MR. HAYWOODE:  
9 Q State your name for the record,  
10 please.  
11 A William H. Jennings.  
12 Q State your address for the  
13 record, please.  
14 A 7 Enfield Lane, Hauppauge, New  
15 York 11788.  
16 Q Mr. Jennings, you've been deposed  
17 previously?  
18 A For?  
19 Q For any matter.  
20 A Yes.  
21 Q So then you understand that I'm  
22 going to put questions to you, you'll  
23 listen to the question and then make  
24 your response.  
25 If your counsel has an objection

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1 W. H. Jennings 6  
2 he will state it for the record.  
3 Functioning under new rules restrains  
4 all the lawyers and I believe with rare  
5 exceptions most questions you have to  
6 respond to and the lawyers have to deal  
7 with it later.  
8 If there's something that I say  
9 that you don't understand, say so and  
10 we'll try to get your response with as  
11 much fidelity as we possibly can.  
12 Q All right, now, sir, you are  
13 employed by Marks Paneth & Shron?  
14 A Yes.  
15 Q When did you first become  
16 employed by them?  
17 A October of 1979.  
18 Q In what capacity did you join the  
19 firm?  
20 A Entry-level.  
21 Q As an entry-level person what  
22 were your duties then?  
23 A Whatever I was delegated.  
24 Q Generally, what were you  
25 delegated?

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1 W. H. Jennings 7  
2 A Bank reconciliations, basic work  
3 as an entry-level. I was more in a  
4 training stage.  
5 Q What position do you hold with  
6 Marks Paneth & Shron now?  
7 A Partner.  
8 Q How many partners are there?  
9 A I believe there's sixty.  
10 Q As a partner, sir, what is your  
11 duty or responsibility in the firm?  
12 A I have a book of business and my  
13 responsibility is to review tax returns,  
14 financial statements before they're  
15 issued.  
16 Q The partners in the firm, the  
17 primary partners, let's see, Marks, Mr.  
18 Marks, what is the first name?  
19 A George marks.  
20 Q How long has he been a partner in  
21 the firm?  
22 A I believe he may be deceased.  
23 Q You believe that?  
24 A Yes.  
25 Q Not to make light of it but news

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1 W. H. Jennings 8  
2 travels slowly.  
3 A He wasn't there when I started.  
4 Q When you started he wasn't there,  
5 okay.  
6 And Paneth?  
7 A Don't know anything about him.  
8 Q Know nothing of him?  
9 A He's not with the firm now.  
10 Q But his name is there?  
11 A Yes.  
12 Q And Mr. Shron?  
13 A Passed away two weeks ago.  
14 Q Did he?  
15 A Yes.  
16 Q Oh, and that's William Shron?  
17 A Correct.  
18 Q When did the firm, if you know,  
19 become Marks Paneth & Shron?  
20 A January 1, 2000.  
21 Q And prior to that day who were  
22 you working for?  
23 A Marks Shron and Company.  
24 Q When did Marks and Shron join  
25 together, if you know?

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1 W. H. Jennings 9

2 A I don't know.

3 Q Do you have any information which

4 you might speculate as to?

5 A I think it was in the 40s.

6 Q So to your knowledge Marks and

7 Shron have functioned together possibly

8 from the 40s?

9 A That's correct.

10 Q Did there come a time when the

11 accounts for the four buildings that

12 we're concerned with, Caanan, Charles

13 Hill, Logan and Fifth and 106th Street,

14 did there come a time when those

15 accounts came to the firm?

16 A Yes, absolutely.

17 Q When, if you recall, was that?

18 A Charles H. Housing was, I

19 believe, 1984.

20 Q Who brought that account to the

21 firm?

22 A Arthur Goldman.

23 Q And he is a partner?

24 A He's deceased.

25 Q Was he a partner in life?

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1 W. H. Jennings 10

2 A Yes.

3 Q And as to Logan and the others?

4 A Logan Plaza, I'm not sure the

5 date on Logan Plaza. I'm not sure.

6 Q To the best of your recollection.

7 A I know that was a later job.

8 Logan came in after Charles H. so maybe

9 '91.

10 Q And Church Homes?

11 A Church Homes came through another

12 accounting firm.

13 Q Do you recall the name of that

14 firm?

15 A No, I don't.

16 Q Approximately when was that?

17 A That was probably around 1990.

18 Q Now, did that firm dissolve or

19 something and transfer the account or

20 did someone simply recruit the account

21 from that firm?

22 A I believe it was recruited. I

23 can't speak on behalf of the deceased.

24 Q Do you have any idea, was that

25 Mr. Goldman again?

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1 W. H. Jennings 11

2 A Yes, Mr. Goldman. I worked for

3 Mr. Goldman.

4 Q You worked for Mr. Goldman at

5 that time?

6 A He had a massive heart attack at

7 forty three.

8 Q That's tragic.

9 And finally, Fifth and 106th

10 Street?

11 A That's an older job. That's

12 probably been with the firm -- I'm not

13 sure. It predates me to the early 70s.

14 Q And in the early 70s, to the best

15 of your knowledge, when the firm was

16 retained who were the partners then?

17 A The partners of the firm?

18 Q Yes.

19 A Bill Shron, Robert Muller, Arnold

20 Rubin, Bert Rosen and Al Goldberg.

21 Q But the Fifth Avenue account was

22 retained by William Shron; is that

23 correct?

24 A I don't know.

25 Q Do you personally know Robert W.

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1 W. H. Jennings 12

2 Seavey who is a defendant in this action

3 or Phyllis Seavey?

4 A Yes.

5 Q When, if you recall, did you

6 first meet them?

7 A Probably 1990.

8 Q Do you recall the circumstances

9 in which you were first introduced to

10 them?

11 A I was introduced to them by Mr.

12 Goldman because I became his manager.

13 Q Was that at the time that you

14 began your business relationship with

15 them?

16 A Yes.

17 Q Did you ever have a conversation

18 with Mr. Shron about Robert Seavey or

19 Phyllis Seavey?

20 A No.

21 Q Did William Shron ever indicate

22 to you that he knew Robert Seavey in

23 1973?

24 A No.

25 Q Now, in the years that you first

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1 W. H. Jennings 13  
2 came to represent the Seaveys in these  
3 four developments, in what capacity did  
4 you work with them?  
5 A Well, originally I supervised the  
6 jobs and then as I worked my way up I  
7 became a manager for Mr. Goldman. I  
8 became a partner January 1, 1991. Mr.  
9 Goldman passed away on October 23, 1991  
10 and I succeeded him as the partner on  
11 those accounts.  
12 Q What services, if any, did you  
13 provide to the Seaveys in these  
14 developments?  
15 A Auditing, tax returns, tax  
16 projections, RPIE, real property income  
17 and expense reports, certioraris.  
18 Q Now, this real property income  
19 expense projections, what does that  
20 consist of?  
21 A It's a statement to, I believe  
22 it's the City of New York to give them  
23 the detailed information on the income  
24 and expenses of the development for  
25 purposes of them to set the tax base,

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1 W. H. Jennings 14  
2 real estate tax base. It's required.  
3 MR. KELLY: Just to clarify,  
4 your question was the Seaveys?  
5 MR. HAYWOODE: I'm sorry?  
6 MR. KELLY: Your original  
7 question had to do with the work  
8 performed for the Seaveys?  
9 MR. HAYWOODE: For the Seaveys  
10 with regard to these  
11 developments.  
12 MR. KELLY: With regards to  
13 these developments, okay.  
14 Q Well, as Mr. Kelly raises it, did  
15 you do work for the Seaveys with regard  
16 to any other developments prior to this?  
17 A Yes.  
18 Q What were those developments?  
19 A University Riverview. All their  
20 real estate work. Anything that  
21 required auditing -- University  
22 Riverview -- because that's my  
23 expertise.  
24 Q How many units at University  
25 Riverview?

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1 W. H. Jennings 15  
2 A I don't know off the top of my  
3 head.  
4 Q To the best of your recollection.  
5 A Two hundred, maybe.  
6 Q What other developments?  
7 A Sand Realty, S&H Realty, Bethune  
8 Towers, B-E-T-H-U-N-E. I have 236  
9 clients to it's hard for me to recollect  
10 specifically the ones I handled for the  
11 Seaveys.  
12 Q Are you aware that at some  
13 previous time we submitted an  
14 interrogatory to your attorneys asking  
15 for a list of the developments owned by  
16 the Seaveys that Marks Paneth & Shron  
17 serviced? Are you aware of that  
18 request?  
19 A No.  
20 Q If I leave a space are you able  
21 to supply to us within ten days --  
22 MR. KELLY: I'm comfortable  
23 with that request.  
24 Q -- the names of each development  
25 serviced by Marks Paneth & Shron with

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1 W. H. Jennings 16  
2 regard to the Seaveys.  
3 (INSERT):  
4 MR. TRAUB: I just want to  
5 state on the record since you  
6 brought that up that we did  
7 object that request on the  
8 grounds of relevancy. I believe  
9 you raised that same request with  
10 Judge Baer. Although Judge Baer  
11 did not make a ruling he also  
12 questioned the relevancy on that  
13 matter so I just want to renew my  
14 objection for the record on that  
15 request and we don't need to get  
16 in an argument on it.  
17 MR. HAYWOODE: Yes, I recall  
18 Judge Baer saying what was the  
19 relevancy of it. I recall making  
20 a statement to him and I recall  
21 him looking and saying, "well,  
22 okay, go ahead," indicating to my  
23 view that, yes, okay, I hear what  
24 you're saying.  
25 MR. TRAUB: Just for the

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1 W. H. Jennings 17  
2 record, I agree that he may have  
3 asked the relevancy. I agree you  
4 made a statement as to what you  
5 believe the relevancy was. I  
6 don't recall him saying okay, go  
7 ahead but --  
8 MR. HAYWOODE: But I clearly  
9 recall it.  
10 MR. TRAUB: Again, we're going  
11 to have a difference of opinion  
12 on that one but I don't want to  
13 get sidetracked. I just want to  
14 put my objection on the record.  
15 Q Some of these developments that  
16 you're mentioning, they're not Michelama  
17 or developments such as Lakeview or  
18 Charles Hill; is that correct? Some of  
19 the developments you've represented the  
20 Seaveys in, they're just ordinary --  
21 A Some of them are, some of them  
22 aren't, yes. I have a real estate tax  
23 expertise. They're all real estate.  
24 Q Is it fair to say that you  
25 represent Phyllis and Robert Seavey in

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1 W. H. Jennings 18  
2 fourteen developments that are Michelama  
3 or type development?  
4 MR. TRAUB: Just for the  
5 record, you're including the four  
6 partnerships that are at issue in  
7 this section?  
8 MR. HAYWOODE: Yes, including  
9 the four that are here.  
10 A It's possible.  
11 Q You have ten others?  
12 A It's possible.  
13 Q You mean you might have twelve  
14 others?  
15 A I might have six others.  
16 Q We sent requests for the  
17 production of information to your  
18 attorneys and we've requested, among  
19 other things, a listing of these  
20 developments and did that information  
21 ever come to you?  
22 A No.  
23 Q Is there anybody else at Marks  
24 Paneth & Shron who would have received  
25 that request who might know the

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1 W. H. Jennings 19  
2 information?  
3 A No.  
4 Q No one else?  
5 A Not to my knowledge.  
6 Q So that how would one determine  
7 that if it became an issue that had to  
8 be answered, how would that be  
9 furthered?  
10 A I don't understand.  
11 Q In other words, what do you have  
12 to do, where would you have to go to  
13 find out how many Seavey developments  
14 Marks Paneth & Shron represent?  
15 A No, I have a client list.  
16 Q Oh, so you would just have to  
17 look at that list; is that correct?  
18 A That's correct.  
19 Q And that list is maintained in  
20 the office?  
21 A Correct.  
22 Q So that it would be possible then  
23 for you to provide it in the ten days  
24 that we mentioned, right?  
25 A Yes.

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1 W. H. Jennings 20  
2 MR. KELLY: And as I said, I  
3 was comfortable with that  
4 request.  
5 MR. TRAUB: And again, I made  
6 an objection to it.  
7 Q Now, let's see, what is GAGAS,  
8 the Yellow Book?  
9 A Generally accepted government  
10 auditing standards.  
11 Q Are you familiar with provision  
12 3.13, Mr. Jennings?  
13 A No.  
14 Q Let me read it to you.  
15 Before an audit organization  
16 agrees to perform non audit services it  
17 should carefully consider the  
18 requirements of paragraph 3.04. The  
19 auditors should avoid situations that  
20 could lead reasonable third parties with  
21 knowledge of the relevant facts and  
22 circumstances to conclude that auditors  
23 are not able to maintain independence in  
24 conducting audits.  
25 Have you ever heard of that?

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1 W. H. Jennings 21

2 A Yes.

3 Q You're fully familiar with that?

4 A Yes.

5 Q And your organization functions

6 in accordance with the GAGAS Yellow Book

7 requirements?

8 A Absolutely.

9 Q In all respects?

10 A We have a quality review

11 department specifically designed for

12 that.

13 Q Within Marks Paneth & Shron?

14 A Within Marks Paneth & Shron.

15 Q Is there any external review?

16 A Yes, we have peer review.

17 Q Peer review by other agencies?

18 A Yes.

19 Q Other accountants?

20 A Yes.

21 Q Who does that peer review?

22 A I couldn't tell you. It was just

23 completed about a month ago, our latest

24 peer review.

25 Q Do you change the reviewer from

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1 W. H. Jennings 22

2 year to year?

3 A Yes.

4 Q What is the purpose that you

5 change the reviewer from year to year?

6 A Really I believe, I don't know

7 because the quality review department

8 handles that, but I would assume it's to

9 maintain some kind of independent

10 opinion on our peer review.

11 Q So this is done in the interest

12 of independence?

13 A I believe so.

14 Q What is the urgency of

15 independence in the function of the

16 auditor?

17 A Well, I think my profession wants

18 to insure that accountants are

19 independent with respect to the audit.

20 Q For what reason, sir?

21 A To prevent any issues that may

22 come up or any outside influences that

23 may influence the auditor to compromise

24 his judgment in performing the audit.

25 Q What are some of the things that

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1 W. H. Jennings 23

2 might compromise an auditor in

3 performing his function as to his

4 judgment?

5 A Well, one of the biggest issues I

6 know is that if they owe you a

7 significant amount of fees my profession

8 has taken the position that that issue

9 may compromise the auditor's judgment.

10 Q Is there anything else that might

11 compromise an auditor's judgment

12 typically?

13 A I guess certain relationships

14 with the clients.

15 Q Such as what?

16 A Such as what? I can't think of

17 anything offhand.

18 Q Let me continue reading 3.13.

19 Audit organizations should not

20 provide non audit services that involve

21 performing management functions or

22 making management decisions and audit

23 organizations should not audit their own

24 work or provide non audit services in

25 situations where the non audit services

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1 W. H. Jennings 24

2 are significant/material to the subject

3 matter of audits. If the audit

4 organization makes the determination

5 that the non audit service does not

6 violate these principles it should

7 comply with all the safeguards stated in

8 paragraph 3.17, which we won't go

9 through at this point.

10 3.14 says audit organizations

11 should not perform management functions,

12 make management decisions or create a

13 situation that impairs the audits

14 organization's independence, both in

15 fact and in appearance.

16 You're familiar with those

17 regulations?

18 A Yes.

19 Q And Marks Paneth & Shron operate

20 and have always operated pursuant to

21 those guidelines and regulations?

22 A Yes.

23 Q And specifically with regard to

24 the developments that we are concerned

25 with, the immediate four and the other

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1 W. H. Jennings 25  
2 ten, assuming that is the number, Marks  
3 Paneth & Shron have always followed that  
4 rule; is that correct?  
5 A Yes.  
6 MR. TRAUB: I'm just going to  
7 object to the extent that your  
8 question insinuates that the  
9 other ten are part of this case.  
10 MR. HAYWOODE: I will  
11 recognize and note it for the  
12 record that you have a continuing  
13 objection.  
14 MR. TRAUB: Okay.  
15 MR. HAYWOODE: It's for the  
16 mention of the other ten.  
17 MR. TRAUB: It's not the  
18 mention.  
19 MR. HAYWOODE: But I'm going  
20 to get them in if it takes all  
21 summer.  
22 MR. TRAUB: My objection as  
23 noted on the record, was not to  
24 your mentioning the other ten, it  
25 was to the extent that your

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1 W. H. Jennings 26  
2 question implied that the other  
3 ten were concerned in this case  
4 when I'll just note that the  
5 caption in this case relates to  
6 four of the --  
7 MR. HAYWOODE: We can  
8 stipulate, Darren, that the other  
9 ten are not presently parties in  
10 this action.  
11 MR. TRAUB: Again, I'm not  
12 looking for a stipulation, I'm  
13 just objecting to the form of the  
14 question. Again, not meaning to  
15 get sidetracked on any arguments  
16 or long-winded statements here.  
17 Q Has any of the four developments  
18 ever owed Marks Paneth & Shron monies at  
19 the end of any particular fiscal year?  
20 A Yes.  
21 Q When did that occur and how much  
22 money was it, if you remember?  
23 A I don't recall. It wasn't enough  
24 to jeopardize our independence.  
25 Q Well, how much money would not be

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1 W. H. Jennings 27  
2 enough to jeopardize your independence?  
3 A A year's worth of fees.  
4 Q What were the fees that Marks  
5 Paneth & Shron received?  
6 A Each audit was approximately  
7 \$24,000 for the audit.  
8 Q Each building charged \$24,000 for  
9 each audit?  
10 A Correct.  
11 Q If I suggest to you that the  
12 Lakeview contract was for \$34,000, would  
13 that refresh your recollection?  
14 A Yes, Lakeview was DHCR, Division  
15 of Housing and Community Renewal.  
16 Q Now, Mr. Jennings, you know Orley  
17 Cameron and Ms. Griffiths and Mr. Pryce?  
18 A I spoke to them on the phone.  
19 Q On the phone?  
20 A To Orley and Ms. Griffiths.  
21 Q Okay.  
22 A We had an issue on Logan.  
23 Q And you're aware that in the  
24 beginning of March of 2007 they were  
25 trying to get certain information to

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1 W. H. Jennings 28  
2 assist John Edmonds.  
3 Have you met John Edmonds?  
4 A Yes, many times. I know John  
5 well.  
6 Q And you know they were trying to  
7 get information from the audit?  
8 A Yes.  
9 Q The audit they were doing?  
10 A Yes.  
11 Q Did you receive communications  
12 from them concerning data that they  
13 wished to get?  
14 A Yes.  
15 Q And without pointing to them,  
16 because they're part of the pleading  
17 that the lawyers have exchanged, is it  
18 fair to say that they were making  
19 requests for documentation, various  
20 samplings of the ledger, the general  
21 ledger, that was maintained by Dalton  
22 Management, did it come to your  
23 attention anything like that?  
24 A I don't know. I wasn't there.  
25 Q You know Mr. Ron Dawley?

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1 W. H. Jennings 29

2 A Yes.

3 Q Who is he?

4 A He's the controller at Dalton

5 Management.

6 Q How long has Mr. Dawley, to your

7 knowledge, functioned as a controller

8 for Dalton Management?

9 A I believe since about 2000.

10 Q And you've worked with him?

11 A Yes.

12 Q Now, tell me, in performing the

13 audit function, what exactly is it that

14 Marks Paneth & Shron do in conjunction

15 with or as opposed to Dalton Management,

16 what do you do?

17 A We receive their year-end

18 package, we call it, which includes

19 their general ledger, usually an

20 accounts payable subsidiary ledger,

21 accounts receivable subsidiary ledger.

22 At that point we plan the audit,

23 determine what confirmations have to be

24 mailed out, we have what's called a

25 brainstorming session with the staff

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1 W. H. Jennings 30

2 involved.

3 Q Is that your staff, Mr. Jennings?

4 A That's correct, my staff.

5 Q How many people do you work with

6 in doing that from your staff?

7 A There's fourteen.

8 Q I see. Go ahead.

9 A At that point I suggest to them

10 what areas I would like to focus on

11 based on what's called a flux review

12 which is a fluctuation review from last

13 year to this year. We look at the prior

14 year's financial statements, if there

15 were any issues, compliance issues that

16 need to be addressed in the current year

17 then my staff goes out in the field,

18 does some sampling and comes back to the

19 office. Afterwards, we discuss any

20 findings or proposed adjustments and

21 then we usually draft an audit and wrap

22 it up. Well, it goes to quality review.

23 It has to go through QR. I am not the

24 final say.

25 Q How long does that process take,

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1 W. H. Jennings 31

2 generally?

3 A About four weeks.

4 Q And you perform those functions

5 for the four buildings involved in this

6 action for the last ten years or so?

7 A Marks Paneth does, yes.

8 Q Did it come to your attention,

9 Mr. Jennings, after the Cameron, Pryce &

10 Griffiths firm began its audit that they

11 were of the impression that they were

12 not receiving information from which

13 they could proceed with their sampling?

14 Did that come to your attention?

15 A I received an information

16 request.

17 Q Approximately when was that, if

18 you recall?

19 A I know it was in May so May of --

20 I'm pretty sure it was in May so

21 whatever year that was.

22 Q What, if any, information did

23 they ask you for?

24 A The initial request was on Logan

25 Plaza.

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1 W. H. Jennings 32

2 Q What information, if any, did

3 they ask you for?

4 A I don't know specifically. The

5 only issue that stands out is the

6 amortization of the cancellation of debt

7 income which we had a discussion about.

8 Q What is a trial balance?

9 A A trial balance is a, if you want

10 to say, balances of accounts that come

11 off the general ledger and that's how we

12 do our flux review.

13 Q So that Marks Paneth & Shron

14 would work from trial balances?

15 A Yes.

16 Q And in the ten years that you

17 worked with the four defendant

18 corporations here or any other

19 corporation where Dalton Management was

20 involved did Dalton provide you with a

21 trial balance to the work that they had

22 done?

23 A Yes, I believe they did.

24 Q Do you personally know that?

25 A No.

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1 W. H. Jennings 33

2 Q Who are the members of your staff

3 who would know that?

4 A Probably my manager.

5 Q Who is that?

6 A Joanne Chiu, C-H-I-U.

7 Q Would it refresh your

8 recollection if I say to you that Mr.

9 Cameron had written or had advised you

10 at any time that Dalton Management

11 didn't have trial balances?

12 A No.

13 Q That never came to your

14 attention?

15 A No.

16 Q Would you be able to audit the

17 books and records of any entity that

18 didn't keep or run trial balances?

19 A Yes.

20 Q What would you have to do in

21 order to do that?

22 A We'd have to use alternative

23 procedures.

24 Q Which would be what?

25 A Use the general ledger as their

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1 W. H. Jennings 34

2 trial balance.

3 Q Am I correct in assuming, I'm not

4 an accountant, am I correct in assuming

5 that you would have to go back to square

6 one?

7 A No.

8 Q And work from square one to re-

9 create your trial balances?

10 A Absolutely not.

11 Q How would you --

12 A They have ending numbers in each

13 account and all you do is take those

14 ending numbers and put it in a

15 comparison schedule with the prior year.

16 Q So that if you were not presented

17 with a trial balance by the accounting

18 company would that not make your job any

19 more difficult or would it make it more

20 difficult?

21 A No effect.

22 Q No effect whatsoever?

23 A No effect whatsoever.

24 Q You wouldn't have to do more work

25 because there were no trial balances?

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1 W. H. Jennings 35

2 A No, it's not uncommon.

3 Q It's not uncommon?

4 A In the industry.

5 Q Is it desirable or preferable

6 that accountants use trial balances?

7 A Yes, it's desirable.

8 Q Why would it be desirable?

9 A Because we want to compare it to

10 the prior year to plan the audit.

11 Q And in terms of sampling various

12 transactions the trial balance would

13 also be helpful?

14 A It's one tool that we use.

15 Q So that you'd rather see it than

16 not, is it fair to say that?

17 A Yes.

18 Q But it had never come to your

19 attention that Mr. Cameron was stating

20 that he did not see trial balances in

21 the work done by Dalton Management, am I

22 correct?

23 A That's correct.

24 Q Now, how many times, if you

25 remember, did Mr. Cameron or his

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1 W. H. Jennings 36

2 associates come to you or contact you or

3 make inquiries of you with regard to the

4 audit they were performing, do you

5 recall?

6 A The history that I recall is that

7 they made an information request on

8 Logan. We responded within three days.

9 Q When you say, "we responded," who

10 actually responded?

11 A Marks Paneth & Shron.

12 Q What was the inquiry, if you

13 recall, that they made on Logan?

14 A I don't recall.

15 MR. KELLY: Did you finish

16 your answer to the question?

17 THE WITNESS: No, I didn't

18 finish.

19 MR. KELLY: Do you mind if he

20 finished his answer?

21 MR. HAYWOODE: Sure.

22 A Subsequent to that I had a

23 subsequent inquiry on Logan from Mr.

24 Cameron's firm and at that point I felt

25 in order to expedite this I called him

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1 W. H. Jennings 37

2 and I spoke to him about that it would

3 be much easier for us and expeditious

4 and less costly if we just, I knew he

5 was looking at several jobs and I felt

6 it was important that if he had

7 questions on all the jobs that when he

8 was finished with his review or audit I

9 wasn't aware of exactly what their

10 engagement was but once he was completed

11 with that that it would be cost

12 effective if we just sat down at a table

13 and went through everything at one shot

14 with the managing agent, whatever

15 questions they had we could probably

16 resolve in one sitting.

17 At that point we had a discussion

18 about a cancellation of debt in the

19 amortization of debt. I remember that

20 conversation clearly. I believe his

21 associate came in at that point.

22 The next communication that I

23 recall receiving was a demand for

24 additional information by a date in

25 November on all the jobs that we have to

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1 W. H. Jennings 39

2 finish.

3 Q. Please, go ahead.

4 A. At that point in time I was

5 troubled because I felt I had a very

6 good relationship with Mr. Edmonds. I

7 called him. I spoke to his secretary;

8 she gave me his telephone number. I

9 called Mr. Edmonds, I spoke to him

10 personally. I explained the situation

11 to him and I told him, "John I'm

12 perfectly willing to have this

13 information put together but I'm going

14 away for two weeks." I'm involved with

15 an international accounting firm. I

16 even told him I could send him my

17 itinerary. I'm going to be gone for two

18 weeks. There is no way I could respond

19 for this date. It is impossible.

20 Q. Yes, you were going to Europe, as

21 I recall.

22 A. Yes, and he said to me, "don't

23 worry about it. I'll speak to my

24 accountants and just relax, it's okay,"

25 and that was really the last

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1 W. H. Jennings 38

2 get this otherwise we have to -- it was

3 somewhat a threatening letter which I

4 took exception to because I believe very

5 strongly we never withheld anything to

6 the extent we had it.

7 At that point in time I called

8 Mr. Orley's office and I asked to speak

9 to him. He wasn't available. I left a

10 message with his secretary. He hadn't

11 gotten back to me so then I called --

12 Q. Not to interrupt you and please

13 pick up later, but when you say, "a

14 threatening letter," what did the letter

15 say?

16 A. Well, it demanded information by

17 a certain date otherwise they were going

18 to take further action.

19 Q. What was the action?

20 A. They were going to tell their

21 client that they were unable to get any

22 information from my firm.

23 Q. And you view that as a threat?

24 A. I do because I never did anything

25 to hold back information but let me

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1 W. H. Jennings 40

2 communication that I had and at that

3 point I left instructions for my staff

4 to look through the information request

5 in my absence to the extent that we had

6 the information available because a lot

7 of the documents we don't have but to

8 the extent available, prepare all the

9 information and when I got back I would

10 look at it and that was it.

11 MR. HAYWOODE: I'm going to

12 ask that these two letters be

13 marked for identification by the

14 reporter.

15 (A letter dated May 10, 2007

16 to Dalton Management was

17 marked as Plaintiff's Exhibit

18 1 for identification, as of

19 this date.)

20 (A response on May 15, 2007 to

21 Ron Dawley from William

22 Jennings was marked as

23 Plaintiff's Exhibit 2 for

24 identification, as of this

25 date.)

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Q In Plaintiff's Exhibit 1 Cameron, Griffiths & Pryce are requesting with regard to distribution the basis and supporting documentation for the journal entries closing out the retained earnings account and adjusting the partner capital account.

They inquire secondly about deferred income, the information to support the canceled debt recorded in the financial statement.

Three, with regard to mortgages they ask for the loan agreements to support all three mortgages.

The fourth is loan payable, the supporting documents for loan payable in accordance with your account number 2340 of your financial statement.

Five, accounts payable, the details to support accounts payable to accounts 2110 of your financial statement.

Six, the accrued expenses that detail to support accrued expenses in

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your account 2120.

Seven, the accumulated amortization cost, the supporting documentation schedule in account 1535.

In eight, the allowance for doubtful account, the supporting detail in account number 1131. Provide the general ledger for your financial statement.

Do you recall receiving Plaintiff's 1?

MR. KELLY: I'm going to object to the form of that question to the extent you called it your accounts or your financial statements implying that they were his or Marks Paneth & Shron's financial statements as opposed to the --

MR. HAYWOOD: So you object to form?

MR. KELLY: Correct.

Q Well, first of all, sir, do you recall receiving the letter?

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A Yes.

Q When you read those words what did you understand them to be asking for, your financial statement, Marks Paneth & Shron's financial statement or the general ledger that Dalton maintained?

A The general ledger that Dalton maintained.

Q So that it's fair to say that on the face of it it appears that Cameron Griffiths & Pryce made a request of Dalton for information that was on the general ledger; is that correct?

A Correct.

Q And that was on May 10th; is that correct?

A Correct.

Q Now I show you Plaintiff's Exhibit 2 which is a communication from you to Ron Dawley.

A Correct.

Q And I'm going to read it.

One, distribution adjustment.

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This was made to agree opening capital. Postings to close out the prior year net income are different for GAAP than the current computer system.

Two, deferred income, see note five. This occurred in 2002 with the old limited partner. The amount was amortized for GAAP but picked up as income in 2002 by the old ninety eight percent limited partner. See attached 2002 tax return in K1 as requested by the limited partner.

Three, see attachment.

Four, loan payable, see attachment number four and note five.

Five, accounts payable, see attachment number five. Note that this includes unpaid management fees prior to 2000 that due to project financial hardship at that time were not taken to help the project's cash flow. These fees were not extra fees but those allowable.

Six and eight, see attachments.

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2 Please note that bad debts reflect

3 vacated tenant arrears. These are

4 deemed uncollectible due to the unlikely

5 chance of recovery. If you need

6 anything further, please call.

7 Is that the response you made on

8 May 15th to Ron Dawley?

9 A Yes.

10 Q Word for word?

11 A Yes.

12 Q How long did it take you to draft

13 the response to Ron Dawley, which is

14 Plaintiff's 2?

15 A I don't know.

16 Q Roughly, if you had to recall?

17 A I don't know.

18 Q Would it have taken two or three

19 days, four days, ten days?

20 A Don't know. Depends on the

21 compilation of information from my

22 staff.

23 Q Let me direct your attention to

24 the dates on those letters. One was May

25 10th on which Dawley received it and

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1 W. H. Jennings 46

2 your response was five days later; is

3 that correct?

4 MR. TRAUB: I'm going to

5 object to the extent that you're

6 surmising that on May 10th that

7 Dalton received it. On May 10th

8 is the date of the letter but not

9 necessarily reflective of the

10 date that Dalton received it.

11 MR. HAYWOODE: I'm accordingly

12 corrected there. If it was

13 transmitted the 10th so then

14 Dalton might not have received it

15 until the 11th or 12th or even

16 the 13th or the 14th if it was a

17 Saturday and Sunday or if it was

18 a holiday intervening. They

19 might not have received it until,

20 well --

21 MR. TRAUB: Certainly before

22 the 15th.

23 MR. HAYWOODE: We know that

24 Bill Jennings received it by the

25 15th because that's when he

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1 W. H. Jennings 47

2 responded so assuming in less

3 than five days or much less Bill

4 Jennings responded; is it fair to

5 say that?

6 MR. TRAUB: Again, I'm not the

7 one answering the questions here.

8 I'm just making my objection for

9 the record.

10 MR. HAYWOODE: Your objection

11 is noted and I've corrected it.

12 Q Is it fair to say that in this

13 space, and I don't know if a Saturday

14 and Sunday intervened there, but between

15 the 10th and the 15th of May you

16 responded to that information?

17 A Yes.

18 Q And you responded in detail; is

19 that correct?

20 A Yes.

21 Q Now, had it come to your

22 attention that Cameron, Griffiths &

23 Pryce had been making requests to Dalton

24 Management for things like trial

25 balances and documentations of support

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1 W. H. Jennings 48

2 and all nature of routine documentation

3 and that they had been told by Dawley

4 you have to go to Marks Paneth & Shron

5 to get that; did that come to your

6 attention?

7 A No.

8 Q Dawley never sent them to you?

9 A No.

10 Q Did it come to your attention

11 that someone at Marks Paneth & Shron at

12 one point said to Cameron, Pryce &

13 Griffiths that if you want information,

14 for instance, concerning the employee or

15 personal records or the allocation of

16 monies paid to Dalton personnel by each

17 corporation you have to pay Marks Paneth

18 & Shron to obtain that information, did

19 that ever come to your attention?

20 A No.

21 Q Did you ever tell Dalton

22 Management that?

23 A No.

24 Q Did anyone, to your knowledge, in

25 Marks Paneth & Shron ever convey that

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1 W. H. Jennings 49

2 thought to Dalton Management?

3 A No, we had discussed payment of

4 the fees to put all this information

5 together with Ron Dawley.

6 Q So that you stated to Dawley that

7 Marks Paneth & Shron would charge the

8 partnership?

9 A No.

10 Q Well, who was going to pay for

11 the accumulation of this information, to

12 your knowledge?

13 A I don't know. That's the

14 question I had.

15 Q You had the question at the time

16 and what, if anything, did you do about

17 having that question; did you

18 communicate that thought to anybody?

19 A Just to Ron.

20 Q What, if anything, did you say to

21 him?

22 A I just said, "We're accumulating

23 a lot of time on these jobs. You have

24 to find out who is going to be

25 responsible for payment of this."

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1 W. H. Jennings 50

2 Q And what did he say to you?

3 A "Okay."

4 Q Is it fair to say that in the

5 wake of that conversation he advised the

6 accountants that if you want that

7 information you have to pay for it?

8 A I don't know.

9 Q You have no idea?

10 A No.

11 Q Now, once again, you testified to

12 the role of the audit and you say it is

13 to send out perhaps fourteen assistants,

14 perhaps more or less, and to sample the

15 work of the accountant on the job; is

16 that correct?

17 MR. KELLY: I'm going to

18 object to the form.

19 I'm not sure that's exactly

20 what he testified but I'll let

21 him answer.

22 Q Do you understand my question in

23 that form?

24 A I believe so, yes.

25 Q Can you answer it?

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1 W. H. Jennings 51

2 A Yes.

3 Q Please, sir.

4 A This or any other job we sample

5 and make inquiries as to the validity of

6 the numbers presented to us by

7 management.

8 Q Okay, and you don't go out and

9 start in January 1st and then work

10 through December 31st and check every

11 single thing that they do?

12 A Absolutely not.

13 Q And to your information that

14 wasn't what Cameron, Pryce & Griffiths

15 were doing either; is that correct?

16 A I am not aware of what they were

17 doing.

18 Q But generally, if you were asked

19 to, well, do an audit as you did it

20 would be standard procedure for an

21 auditor to say, look, I'm going to

22 choose selected areas, you testified to

23 that before; is that correct?

24 A Yes.

25 Q And I'm going to look at the

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1 W. H. Jennings 52

2 profile from last year and I'm going to

3 test in certain areas to see if those

4 numbers are coming up true and it's like

5 the Internal Revenue Service, right?

6 They look at your return and they say,

7 well, we're going to look at this one,

8 and we might not necessarily go through

9 every single thing; is that correct?

10 A Yes, but there are certain

11 requirements that we're responsible for

12 to look at internal controls to make

13 sure they're functioning.

14 Q You look at contracts too?

15 A Contracts.

16 Q To see that there's compliance

17 with the contracts and the vendors?

18 A Correct, we may actually have

19 copies of those, request copies of those

20 from management to have in our files.

21 Q With regards to, I believe it was

22 Lakeview or Logan, was there a security

23 company functioning there without any

24 contract, to your recollection?

25 A Not to my recollection.

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1 W. H. Jennings 53

2 Q Are you aware that we requested

3 the production of the contract for a

4 security company which was not produced

5 as yet but you know nothing about that?

6 A No.

7 Q So so far as you're concerned

8 everyone functioning at these four

9 developments had a contract at least; is

10 that correct?

11 A To my knowledge, based on our

12 procedures.

13 Q Now, in performing the audit all

14 Marks Paneth & Shron would do is come

15 and sample information provided by

16 Dalton; is that correct?

17 A Sample, test, confirm, inquire.

18 Q And send for quality review?

19 A Correct.

20 Q And everything that Marks Paneth

21 & Shron looks at would be something that

22 Dalton Management produced and

23 maintained; is that correct?

24 A Yes.

25 MR. KELLY: If I may talk to

LEX REPORTING SERVICE  
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1 W. H. Jennings 54

2 the witness?

3 MR. HAYWOODE: No.

4 MR. KELLY: I'll tell you what

5 I'm going to talk to him about.

6 MR. HAYWOODE: I prefer you

7 don't at this point.

8 MR. KELLY: All right.

9 MR. HAYWOODE: I mean, we can

10 take a break but let me take a

11 little while here.

12 Q Why, if you know, would Ron

13 Dawley have to go to Marks Paneth &

14 Shron to get information in response to

15 Plaintiff's 1 which should have been in

16 his possession?

17 A Beats the heck out of me. I'll

18 be honest with you. I'll call it lazy.

19 Q So that what you're indicating is

20 that Ron Dawley had all this information

21 but he said why should I hurt myself if

22 I can pass this on to Marks Paneth &

23 Shron and let them exercise themselves

24 for money?

25 A Yes.

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1 W. H. Jennings 55

2 Q That's what he did?

3 A For what?

4 Q You're saying that that's the

5 attitude, I'm characterizing it

6 colorfully, that's not your testimony,

7 but for the most part that's what he

8 did, he just said let Marks Paneth &

9 Shron deal with it?

10 A Very common in my industry.

11 Q And if the accountant had all

12 this information at his fingertips why

13 would he tell a partner for whom he

14 worked that go bother the auditors? Why

15 would he do that if he had it?

16 A Why would who?

17 Q Dawley or anybody working for

18 Dalton. Why would they even want the

19 auditors approached with that?

20 A Lazy. My industry, it's not

21 uncommon. I have clients who are

22 controllers and owners and say, you

23 know, do you have a copy of this because

24 I don't want to open my file. I don't

25 want to walk ten feet to get it. It's a

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1 W. H. Jennings 56

2 very common practice.

3 Q Mr. Jennings, this wasn't the

4 only time that Ron Dawley referred these

5 accountants to you; was it? They

6 repeatedly referred them to you; isn't

7 that correct?

8 A Yes.

9 Q And the accountant sent letters,

10 I'm not going to introduce them at this

11 time but I believe everyone has received

12 them in the pleadings in the order to

13 show causes exhibits, they sent letters

14 saying we can't get to first base here.

15 There is no trial balance. The

16 documentation and support for the audit

17 that we're trying to complete they were

18 commissioned to do audits on two or

19 three years and they couldn't even get

20 out a 2006. Did they tell you that?

21 A No.

22 Q Well, did you wonder at the time

23 when you said to John Edmonds, look, I'm

24 going to Europe, I've got business,

25 whatever, did you wonder why the

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1 W. H. Jennings 57

2 auditors would have to wait for you to

3 come back from Europe to get information

4 that they could have gotten from Ron

5 Dawley and Dalton Management? Did you

6 wonder about that?

7 A No.

8 Q I mean, laziness is one thing,

9 right, but didn't this seem beyond

10 laziness to you that Dalton was

11 constantly sending these people to Marks

12 Shron, the auditor, in order to do this?

13 A No, it's not unusual in my

14 industry.

15 Q And that Dawley and Dalton were

16 content to say, "don't bother us, we

17 don't have it. Fight with Marks Shron,

18 they have it"?

19 A It's not uncommon.

20 Q But suffice to say that you did

21 have the information to respond on May

22 15th, 2007?

23 A That's correct.

24 Q And you say that Ron Dawley had

25 it too?

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1 W. H. Jennings 58

2 A Yes, he should have.

3 Q He should have had it?

4 A Yes, because mortgages, documents

5 like that, proposed journal entries, he

6 has them. We get the information from

7 him.

8 Q And you keep it?

9 A We have to.

10 Q Supporting documents?

11 A We have to.

12 Q But you would only keep

13 supporting documents on particular areas

14 where you audited and sampled; is that

15 correct?

16 A Not necessarily. We need

17 mortgage documents that were maybe

18 twenty years old. We keep them in our

19 permanent files.

20 Q Are you aware that these

21 accountants made a request for a series

22 of documents before Judge Baer for

23 documents that were not provided or that

24 Dalton suggested that they just didn't

25 have?

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1 W. H. Jennings 59

2 MR. TRAUB: I'm just going to

3 object to the form of the

4 question and the commentary in

5 there that does misstate Judge

6 Baer's directives and Dalton's

7 responses to any written

8 discovery request that were

9 propounded pursuant to federal

10 civil procedure 33 and 34.

11 Q If these accountants were to say

12 that Ron Dawley said to them he didn't

13 have this detail they would either be

14 mistaken or lying, to your knowledge; is

15 that correct?

16 A Who would be mistaken or lying?

17 Q These accountants, Cameron

18 Griffiths & Pryce. If they said that

19 Ron Dawley said to them that he just

20 didn't have this information, that

21 you've got to go Marks Paneth & Shron to

22 get it, they would either be mistaken or

23 lying; is that correct, to your

24 knowledge?

25 A No.

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1 W. H. Jennings 60

2 Q Was it possible that Dawley

3 didn't have any of this?

4 A No.

5 Q What makes you certain that

6 Dawley didn't have any of these

7 documents or details?

8 A We get our documents from the

9 managing agent. We do not create

10 documents. Our documentation is

11 received from the managing agent. I

12 wasn't privy to the conversation. I

13 don't know what the discussion was

14 between them. I cannot give you an

15 answer as to what transpired between

16 them.

17 Q You didn't bring with you today

18 your financial statement report; did

19 you?

20 A No.

21 Q I don't want to mark it at this

22 point but I'm going to read from the

23 independent auditors report about Marks

24 Paneth & Shron, not the entire thing but

25 the third paragraph where you say, "in

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1 W. H. Jennings 61

2 our opinion the financial statements

3 referred to above present fairly in all

4 material respects the financial position

5 of Fifth and 106th Street Association as

6 of December 31st 2006 and 2005 and the

7 results of its operation and its cash

8 flows from year end of December 31, 2006

9 in conformity with accounting principles

10 generally accepted in the United States

11 of America." The document is dated

12 September 14, 2007, entitled Independent

13 Auditors Report. Would that fairly

14 represent the representation by Marks

15 Paneth & Shron's report?

16 A Yes.

17 Q These audit reports, they're

18 provided to the United States Private

19 Housing and Urban Development?

20 A Which job are you referring to?

21 Q The four corporations that we're

22 concerned with.

23 A Different reporting agencies.

24 Q What agency received these

25 reports?

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1 W. H. Jennings 62

2 A Some of them had to be reported

3 to HUD.

4 Q Housing and Urban Development.

5 A And Fifth and 106th Street is

6 Division of Housing, DHCR.

7 Q Division of Housing and Community

8 Renewal?

9 A Correct.

10 Q Any other agencies receive these

11 audit reports?

12 A No, not to my knowledge.

13 Q Do they receive them in one copy

14 or do they receive multiple copies?

15 A I don't know. The final

16 financials are transmitted to the

17 managing agent.

18 Q Of the developments?

19 A Correct.

20 Q And then the developments

21 communicate them to these agencies?

22 A Yes.

23 Q Do the agencies ever contact

24 Marks Paneth & Shron to confirm you

25 really did this right and they didn't

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1 W. H. Jennings 63

2 make it up?

3 A No.

4 Q They don't contact you?

5 A No, very rarely.

6 Q You never submit any documents to

7 HUD and to DHCR or any other agency?

8 A We do an electronic filing for

9 HUD.

10 Q An electronic filing?

11 A Yes, HUD requires if they have an

12 insured mortgage that the financial

13 statement be electronically filed.

14 Q Is that by wire?

15 A Internet.

16 Q I'm going to show you a document

17 which I believe is contained in the

18 report that you submitted at least to

19 DHCR and ask you if you recognize it?

20 MR. TRAUB: Is it this entire

21 thing?

22 MR. HAYWOODE: No, just that

23 page.

24 MR. TRAUB: Just this one

25 page?

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1 W. H. Jennings 64

2 MR. HAYWOODE: Yes.

3 And this will be Exhibit 3.

4 MR. HAYWOODE: This will be

5 three, yes.

6 (A certified annual financial

7 and operating report was

8 marked as Plaintiff's Exhibits

9 3 for identification, as of

10 this date.)

11 (A cumulative general ledger

12 was marked as Plaintiff's

13 Exhibit 4 for identification,

14 as of this date.)

15 Q What is Exhibit 3?

16 A A statement of the audit fee,

17 paid Marks Paneth & Shron.

18 Q Is it restricted to any

19 particular year?

20 A I don't know what year you're

21 looking at.

22 Q The financial statement that I

23 read from was 2006. Would that refresh

24 your recollection if that would be for

25 2006?

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1 W. H. Jennings 65

2 A It could be 2006. It could be

3 2005. It could be 2007.

4 MR. TRAUB: Just to make the

5 record clear, do you want to just

6 show him the whole packet? We

7 don't have to mark it as an

8 exhibit but just so we can see

9 which packet it came from and

10 maybe that will help clarify what

11 this statement is.

12 Q Mr. Jennings, I show you this

13 financial statement which has the date

14 December 31st, 2006 and ask you if that

15 refreshes your recollection, sir, that

16 the statement comes from --

17 A Yes, I agree.

18 Q In 2006 what was the fee paid to

19 Marks Shron?

20 A The audit fee was \$34,155.

21 Q And that's --

22 A That's what was billed.

23 Q Did they pay that eventually?

24 A Eventually, yes.

25 Q Did they pay it timely?

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1 W. H. Jennings 66

2 A I don't recollect.

3 Q Now, this financial statement was

4 submitted to the Department of Housing

5 and Community Renewal?

6 A That's correct.

7 Q And it was submitted to Housing

8 and Urban Development?

9 A That I don't know. I don't

10 believe so.

11 Q But at the time that you prepared

12 that document and sent it to the

13 management or to whomever you sent it

14 you knew that it would be received at

15 some point by the Department of Housing

16 and Community Renewal?

17 A That's correct.

18 Q And that it might be reviewed by

19 Housing and Urban Development; you knew

20 that possibility?

21 A Possibility, yes.

22 Q And as you look at that document

23 today do you stand by the truth of it?

24 A Yes.

25 Q Now, I show you Plaintiff's 4

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1 W. H. Jennings 67

2 which is a cumulative general ledger

3 which recites among other items that

4 account number 16220 sums of money paid

5 to a vendor?

6 A Yes.

7 MR. KELLY: Mel, just so the

8 record's clear, at least my copy

9 of Plaintiff's Exhibit 4 has some

10 handwritten notes on it, some

11 circles and some fees. Can we --

12 MR. HAYWOODE: No idea.

13 MR. TRAUB: I didn't know if

14 that

15 was --

16 MR. HAYWOODE: I'm not

17 introducing it for the circles

18 and comments. I'm only

19 introducing it for the printed

20 matter.

21 MR. TRAUB: Just so the record

22 was clear, I just wanted to ask

23 if you knew who those markings

24 came from.

25 MR. HAYWOODE: Well, it wasn't

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1 W. H. Jennings 68

2 done in my presence. I don't

3 know. Perhaps the accountants

4 did it. I don't know. Maybe we

5 have some children that hang out

6 around here with pencils that

7 might have done it but I doubt

8 it.

9 May we proceed, Darren?

10 MR. TRAUB: Yes.

11 Q What is that document?

12 A This is the general ledger.

13 Q Who's general ledger?

14 A Dalton's.

15 Q With regard to item 16220 what,

16 if anything, does it say?

17 A It shows the total amount paid

18 Marks Paneth & Shron for that calendar

19 year.

20 Q And that's 2006?

21 A Correct.

22 Q What is the amount of money that

23 the general ledger suggests was paid to

24 Marks Paneth & Shron?

25 A \$108,525.

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1 W. H. Jennings 69

2 Q And \$.45?

3 A Correct.

4 Q Which comes first, the general

5 ledger or the audit?

6 A The general ledger.

7 Q And you testified previously that

8 the audit is dependent on the general

9 ledger for what it says; is that

10 correct?

11 A Correct.

12 Q Is it a statement of truth that

13 Marks Paneth & Shron received in 2006

14 \$108,525.45?

15 A According to their cash basis

16 general ledger, yes.

17 Q But is the statement true? Is it

18 true?

19 A According to their general

20 ledger, yes.

21 Q Well, sir, according to Marks

22 Paneth & Shron's records is it true that

23 they paid Marks Paneth & Shron

24 \$108,525.45 in 2006?

25 A I don't have Marks Paneth &

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1 W. H. Jennings 70

2 Shron's records here.

3 Q So are you saying that there is a

4 possibility this isn't true?

5 A It's possible, yes. This is a

6 cash basis.

7 Q As opposed to?

8 A The financial statements are on

9 an accrual business.

10 Q On which of these bases is the

11 accounting done by Dalton?

12 A This particular case their

13 general ledger says it's a cash basis.

14 Q I know with a corporation you

15 have to do an accrual basis; is that

16 correct?

17 A With a partnership, yes.

18 Q Was there some determination made

19 by the partnership that the cash basis

20 accounting would be converted to an

21 accrual accounting?

22 A We proposed -- their journal

23 entries proposed to adjust the books and

24 records on any audit.

25 Q Let me understand what you just

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1 W. H. Jennings 71

2 said, Mr. Jennings. We, meaning Marks

3 Paneth & Shron, propose what, sir?

4 A Journal entries.

5 Q Journal entries. And what is a

6 journal entry?

7 A A journal entry is a proposal

8 that Marks Paneth & Shron makes, the

9 auditor makes, to either correct or

10 reclassify or make the financial

11 statements in accordance with GAAP.

12 Q So that do you have an

13 independent recollection that that

14 request was made of Dalton Management in

15 this instance?

16 A No.

17 Q Is there any written record of

18 such a request being made by Dalton

19 Management in this instance?

20 A We would propose journal entries

21 and transmit them to them.

22 Q Is it your recollection that you

23 actually transmitted a journal entry

24 request to Dalton in this instance?

25 A Yes, it would be.

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1 W. H. Jennings 72

2 Q You're certain of that?

3 A Fairly certain.

4 Q I would call for the production

5 --

6 A It's standard procedure.

7 Q But the maintenance of trial

8 balances is standard procedure in many

9 places too in accounting; isn't that

10 correct?

11 A Yes.

12 Q But apart from what should have

13 happened and what is standard procedure

14 do you have an independent recollection

15 that a proposal for journal entry change

16 was sent to Dalton by Marks Paneth &

17 Shron? Do you have an independent

18 knowledge of that?

19 A No.

20 Q Is that information you can

21 retrieve from your records?

22 A Yes.

23 MR. HAYWOODE: I would call

24 for the production of that

25 proposal in ten days.

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MR. TRAUB: Well, I would say that they were made available already when the audit work papers were made available for inspection and they would have been included as part of the audit work papers.

MR. HAYWOODE: You know, we have a dispute going before Judge Francis because the methodology of sending in boxloads isn't complying with discovery demands. At least I understand --

MR. TRAUB: Absolutely not.

MR. HAYWOODE: I understand that may be your position.

MR. TRAUB: That's not even close to my position.

MR. HAYWOODE: Notwithstanding that it might have been supplied before are you able to singularly go and put your hand on this document and then to provide it to us in ten days, albeit a

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second time?

MR. KELLY: I don't know the answer to that.

MR. TRAUB: Just so the record is clear, my objection was not to the production of documents through quote on quote boxloads of documents. My problem with your discovery responses was the lack of documents that I felt should have been in that box.

MR. HAYWOODE: Subjectively.

MR. TRAUB: Subjectively or at least a clarification that those documents did not exist. It was not to the method of production.

MR. KELLY: I will not be able to answer that until I review the documents back at my office.

MR. HAYWOODE: All right, so that you may need more than ten days.

MR. KELLY: Yes. I don't know, is my answer.

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MR. HAYWOODE: But you will supply it within a reasonable time.

MR. KELLY: Or I will make the documents available again for you guys to find it.

MR. HAYWOODE: I'm going to call for the production of the documents and let's say --

MR. KELLY: We'll agree to discuss this afterwards.

MR. HAYWOODE: I appreciate, counsel, what you're telling me.

Q How does that work, Mr. Jennings, assuming that Marks Paneth & Shron received \$108,000 in 2006 in what way under the accrual system do you say that money should be reported or should be reflected in the financial statement?

A It appears to be for prior years, 2004, 2003, 2002. There was a three year tax exam. I did not handle that but I know that spanned three years. We received a note change. I don't know

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what year that ended so typically those amounts would be accrued in a prior period.

Q So it's your testimony that Marks Paneth & Shron received a fee of \$34,000?

A For the audit.

Q And can I assume that that other seventy four somewhat thousand dollars was money that had accrued in previous years?

A It's possible, yes. It's very likely that it accrued in prior years.

Q Well, it would almost have to be a certainty; is that correct?

A It depends on when it was billed.

Q So that I call your attention again to our discussion about GAGAS and particularly your testimony concerning accountants being owed large sums of money by their audittee, if that's a word, or the company that they're auditing. Are you telling me that in 2006 when Marks Paneth & Shron sat down

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1 W. H. Jennings 77

2 to do an audit on what records Dalton

3 Management produced to them that as they

4 were doing it they were owed \$74,000 by

5 the Seavey group or the four

6 developments that we're concerned with?

7 A Not the four developments. Fifth

8 and 106th. This particular development.

9 Q So that the other three may have

10 owed money also; is that correct?

11 A That's correct.

12 Q So that it's fair to say that at

13 the time that you were auditing Fifth

14 and 106th Street Corporation in 2006 the

15 Seavey group might have owed Marks

16 Paneth & Shron \$100,000; is that

17 correct?

18 A It's possible.

19 Q Would you consider that to be

20 material and substantial?

21 A It depends on what period those

22 fees were for and if it was billed.

23 Q Well, I direct your attention now

24 to Plaintiff's 4 where I see years

25 listed here and it started in 2001, 2004

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1 W. H. Jennings 78

2 tax analysis \$25,000, 2003 tax

3 preparation \$7,800 and then July to June

4 2005 to 2006. So it appears that at

5 least \$25,000 of this money was

6 outstanding since presumably January of

7 2001, sometime in 2001; is that correct?

8 A That may be when the tax exam

9 began but typically tax exams, unless it

10 really builds up a tremendous amount of

11 time, I mean hundreds of thousands of

12 dollars, it wouldn't be billed until the

13 conclusion of the tax examination.

14 Q Now, specifically with regard to

15 the GAGAS rules and your quality review

16 committee, was the quality review

17 committee aware at that time that this

18 audit was performed that a minimum of

19 \$75,000 and possibly more than \$100,000

20 was owed by this client to Marks Paneth

21 & Shron at the time you were doing an

22 audit at their work?

23 MR. KELLY: I'm going to

24 object to that. The form of that

25 question is completely using

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2 improper terms, making the

3 question itself misleading.

4 If you want to use the correct

5 terms --

6 MR. HAYWOODE: The witness can

7 answer. That's not a proper

8 objection on 221. Are you

9 directing him not to answer?

10 MR. KELLY: Objection as to

11 form. If you restate the

12 question using the correct terms

13 and the correct dates then, yes.

14 Q In 2006 when you submitted this

15 audit to quality review in Marks Paneth

16 & Shron were they aware that this audit

17 was performed while these companies owed

18 Marks Paneth & Shron anywhere from

19 \$74,000 to over \$100,000? Were they

20 aware of that?

21 A It wasn't outstanding.

22 Q Were they aware that there was

23 such a debt?

24 A There was no debt.

25 Q Well, were they aware that that

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1 W. H. Jennings 80

2 money had been paid to them and had

3 accumulated from 2001?

4 MR. TRAUB: Objection. That

5 mischaracterizes the prior

6 testimony or the testimony of

7 what this 2001 to 2004 tax

8 analysis was. And just so we're

9 clear, Mel, I am objecting not

10 just to the form but to your

11 insinuation that this was

12 outstanding from 2001 when that

13 is not what his testimony was.

14 MR. HAYWOODE: An objection to

15 insinuation is not credible under

16 221. Lawyers can insinuate

17 anything. And the tone of

18 whatever insinuation I may make

19 isn't coming across on this

20 record.

21 MR. TRAUB: Which is why, Mel,

22 I'm actually here to keep a clean

23 record, as I know you are.

24 MR. HAYWOODE: Not as to tone

25 and not as to insinuation.

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MR. TRAUB: Absolutely. As to prior testimony, to mischaracterization of prior testimony and to an insinuation of what my client's involvement was that something was out to 2001. He did not testify that this was outstanding in 2001 and your mischaracterization of either his testimony or the insinuation of what an act that my client did is in fact a proper objection. It's on the record.

Q Mr. Jennings, let's go back. What is all this telling us, the 2001, you tell me, I don't know, tax analysis 2001 to 2004, let's see, tax preparation 2003 \$7,800, various PR, what is that, promotions? In Exhibit 4, what is PR, 950920? What is that various PR?

A I don't know.

Q Do you have any idea?

A No.

Q But the money is good, 950920?

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A Correct.

Q And \$15,000 from October, let's see, I don't know, from October 2000 to July 2, what are these items? What do they look to be? Do you have any idea?

A All I know is that my firm handled the tax exam. There were some analyses requested by Mr. Edmonds regarding the opt out and the viability of an opt out, that I know, whether it was viable because in this particular case Fifth and 106th has a 236 interest reduction subsidy which means that they have a one percent subsidized mortgage. If they lose that mortgage that'll be a tremendous expense to the project. If they opt out they have to make sure that the market rents that were provided to me would cover it so this might have had to do with an opt out computation. I'd have to look because obviously this PR is cut off. This time and billing comes right off our time runs.

Q Sir, are you finished?

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A There is documentation on all the time.

Q It is a fact the \$108,525.45 was paid to Marks Paneth & Shron in the real world as opposed to the world of accrual or cash --

A I repeat --

Q -- in 2006?

A According to Dalton's records that is a correct statement.

Q And sir, according to Marks Paneth & Shron's records --

A I do not audit Marks Paneth & Shron's records. I am a partner. One of sixty. I am not the administrative partner. I am not the accounts receivable clerk. I do not handle Marks Paneth & Shron's books so you're asking me to make --

Q Is there an accounts receivable clerk who can answer this question?

A Probably can, yes.

Q Can you tell me who that is?

A I don't know really anybody in

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bookkeeping so I can't --

Q Well, perhaps you will inquire and tell Mr. Kelly and he'll provide me the names in ten days?  
(INSERT):

MR. KELLY: Perhaps.

MR. TRAUB: If I can make a suggestion, and again, this is a means of helping.

MR. HAYWOODE: Hold on, wait. Off the record.

MR. TRAUB: No, I'm not off the record.

MR. HAYWOODE: If it's a suggestion, I want to go off the record.

MR. TRAUB: I'm not off the record with my suggestions, Mel. I want my suggestion on the record.

MR. HAYWOODE: 221 doesn't allow the lawyer to testify or make long arguments or statements. Is this something

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1 W. H. Jennings 85  
 2 that we need to hear?  
 3 MR. TRAUB: No, what my  
 4 suggestion is, and it's on the  
 5 record --  
 6 MR. HAYWOODE: No, no. If  
 7 it's not testimony, if it's not  
 8 an objection, I want it off the  
 9 record.  
 10 MR. TRAUB: Mel, I want it on  
 11 the record and I'm entitled to  
 12 have my statements on the record.  
 13 MR. HAYWOODE: No, no, no, no.  
 14 MR. TRAUB: Absolutely and  
 15 Mel, my statement on the record  
 16 is to help everyone and it's not  
 17 testimony about this.  
 18 MR. HAYWOODE: Can we hear it  
 19 first off the record?  
 20 MR. TRAUB: No, I'm going to  
 21 put it on the record.  
 22 MR. HAYWOODE: Well, I object  
 23 to it.  
 24 MR. TRAUB: Then you can  
 25 object to it. Your objection's

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1 W. H. Jennings 86  
 2 on the record. That's nice.  
 3 My suggestion is to help  
 4 things. Any questions that you  
 5 have or follow up information,  
 6 why don't you put in a letter to  
 7 Mr. Kelly and then after this  
 8 they can then take it under  
 9 advisement rather than trying to  
 10 make requests now that he may  
 11 then either forget and then  
 12 you're going to assume that he's  
 13 not answering or something so my  
 14 suggestion was you've made your  
 15 request on the record and then  
 16 maybe after this you can put in a  
 17 letter to everyone what  
 18 information you feel you didn't  
 19 receive or you would like to  
 20 receive within ten days.  
 21 MR. HAYWOODE: I'd rather do  
 22 it in accordance with the usual  
 23 stipulations. There'll be a  
 24 record produced here, he'll see a  
 25 space and we ask for the keeping

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1 W. H. Jennings 87  
 2 of the space now so that when the  
 3 record is executed by his client  
 4 he will see that this is  
 5 something that has to be done.  
 6 MR. KELLY: Right but here's  
 7 two things; you may not get the  
 8 record within ten days and number  
 9 two Mel, I don't know what these  
 10 usual stipulations you keep  
 11 referring to are.  
 12 MR. HAYWOODE: This is getting  
 13 to be, I mean, again, I don't  
 14 mind talking but this has nothing  
 15 to do with what we're here for  
 16 today.  
 17 MR. TRAUB: It actually does,  
 18 Mel, because you said usual  
 19 stipulations, I don't know what  
 20 those usual stipulations are.  
 21 This is the first deposition any  
 22 of us have ever had together so  
 23 what are these usual stipulations  
 24 that you're referring to?  
 25 MR. HAYWOODE: I'm going to

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1 W. H. Jennings 88  
 2 refer you to the practice of the  
 3 last hundred and fifty years of  
 4 the bar, okay? Now, this young  
 5 lady will tell you what the  
 6 stipulations are.  
 7 MR. TRAUB: Do you know what  
 8 they are?  
 9 MR. HAYWOODE: Darren, please,  
 10 I mean, again, I realize things  
 11 well up here, it happens every  
 12 time, okay, but it's not  
 13 appropriate.  
 14 MR. TRAUB: I stand by my  
 15 statements.  
 16 MR. HAYWOODE: I receive them  
 17 but I'd rather do it the other  
 18 way, okay.  
 19 MR. TRAUB: Again, these  
 20 weren't directed to me so it was  
 21 just my suggestion.  
 22 MR. HAYWOODE: In fact, it's  
 23 Bill Kelly's objection and he's  
 24 not making it.  
 25 MR. KELLY: I haven't had the

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1 W. H. Jennings 89

2 chance to speak yet

3 MR. HAYWOODE: Now, let's hear

4 Bill Kelly's objection.

5 MR. KELLY: What are the usual

6 stipulations that we have on the

7 record?

8 (Whereupon, a brief discussion

9 was held off the record.)

10 Q There was a discussion off the

11 record in which counsel suggested ways

12 in which the \$105,000 could have been

13 accrued or accumulated and does that

14 refresh your recollection, Mr. Jennings,

15 as to how that \$105,000 was actually

16 accumulated?

17 A It could have been accrued, yes.

18 Q All in the one year?

19 A It's possible but not necessarily

20 factual. I'd have to look at the facts.

21 Q If we look in the volumes of

22 other records that were presented to us

23 might we find, for instance, that one of

24 those items was billed in 2002?

25 A It's possible, yes. We keep work

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2 in process reports, detailed reports, by

3 hour, by employee, etcetera, by account,

4 by service, very detailed records. The

5 determination of when it's billed,

6 that's discretionary.

7 Q So that your testimony is that

8 Marks Paneth & Shron could have

9 performed services anytime between 2001

10 and 2003 or whatever and not billed them

11 to this client until 2006; is that

12 correct?

13 A Yes.

14 Q In looking at the general ledger,

15 the general ledger showed that Dalton

16 Management chose to reflect all that

17 money as being paid in 2006; is that

18 correct?

19 A That's correct.

20 Q Who made the determination to

21 report to DHCR the \$34,000 and to

22 withhold from them the information

23 concerning the additional \$74,000, who

24 made that determination?

25 A Based on our audit procedures.

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1 W. H. Jennings 91

2 Your \$34,155 represents the audit fee.

3 Q Under your contract with the

4 housing company -- are you familiar with

5 the contract?

6 A Yes.

7 Q It sets forth an amount of money

8 that the company is to receive; is that

9 correct?

10 A Yes, for accounting services.

11 Q Does it speak of any process to

12 be followed if monies in excess of the

13 accounting services is to be paid?

14 A Yes.

15 Q What, if anything, do you recall

16 that it says about such money?

17 A You need the approval of DHCR.

18 Q So that it's fair to say that

19 before the money was paid to Marks,

20 Paneth & Shron that they obtained the

21 approval of DHCR?

22 A The accounting services, not the

23 tax services.

24 Q Did Marks Paneth & Shron seek or

25 receive any approval from DHCR for the

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1 W. H. Jennings 92

2 payment of \$74,000 in 2006?

3 A For the accounting services, the

4 audit services, not the tax services.

5 Q Did they receive any approval or

6 authorization from DHCR for the payment

7 of \$74,000 in addition to the accounting

8 and to the audit services and 2006?

9 A For the accounting services, not

10 the tax services.

11 Q You received an authorization for

12 the \$74,000?

13 A No, not for the tax services.

14 Q Did you apply for an

15 authorization for the \$74,000?

16 A It wasn't necessary. It was for

17 tax services. That was a tax exempt.

18 The tax services is not covered by the

19 retainer.

20 Q It not being necessary, sir, is

21 that the reason that only \$34,000 was

22 reported to DHCR?

23 A No, if there were other payments

24 made it would be disclosed in a separate

25 line item but I'd have to look at every

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1 W. H. Jennings 93

2 single financial statement to see when

3 it was accrued.

4 Q Well, we know that the general

5 ledger reported it all at \$105,000

6 payable to Marks Paneth & Shron; is that

7 correct? That's what the general ledger

8 did.

9 A That was paid.

10 Q Yes, but that's how the general

11 ledger produced and reported it.

12 A That's not GAAP.

13 Q Who made that decision to report

14 \$34,000 and to place the balance of the

15 \$74,000 in different categories?

16 A It may not be in different

17 categories. It may have been accrued in

18 prior years and it doesn't show up in

19 2006. It could have been 2005, it could

20 have been 2004. I mean, I'd have to

21 look at the work papers to make that

22 determination. You're asking me a

23 question I cannot answer.

24 Q Whatever the answer is, it is

25 certain that Dalton Management didn't

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1 W. H. Jennings 94

2 make that determination; is that

3 correct? Dalton didn't make it. Dalton

4 put in the general ledger \$105,000,

5 right?

6 A We proposed adjustments to make

7 the financial statements in accordance

8 with --

9 Q And did Dalton agree and accept

10 those adjustments?

11 A They would have to. They're

12 their financial statements.

13 Q But did they?

14 A They would have to.

15 Q They would have to accept it --

16 A Yes.

17 Q -- purely because Marks Paneth &

18 Shron --

19 A No.

20 Q -- proposed it?

21 A We propose journal entries. They

22 have to agree to the journal entries.

23 Q And there's no writing --

24 A No.

25 MR. KELLY: Let him finish his

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2 question.

3 Q -- that would memorialize this

4 suggestion or proposal or this

5 acceptance or acquiescence, nothing?

6 A No.

7 Q Now, when they accepted this in

8 2006 is it fair to say that Dalton

9 Management should have immediately

10 amended its general ledger?

11 A If they agreed to the proposed

12 journal entries?

13 Q Yes.

14 A Yes.

15 Q They would have amended and

16 changed their general ledger?

17 A For the prior year, that's

18 correct.

19 Q So that when Cameron, Pryce &

20 Griffiths looked at their books in March

21 of 2007 they should have seen that

22 change to the general ledger; is that

23 correct?

24 A That's correct.

25 Q But they didn't. They didn't see

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2 it in March of 2007. The change wasn't

3 made by Dalton. Does that refresh your

4 recollection as to what you just

5 testified to?

6 A I don't know what their

7 procedures were internally, as far as

8 that was concerned. They would have to

9 make it at the end of 2006 to correct

10 2006 based on the approved journal

11 entries. If it was made in 2007 the

12 only thing it would affect would be the

13 balance sheet accounts. It wouldn't

14 affect any profit and loss statement

15 because part of its capital accounts

16 would already be closed out.

17 MR. HAYWOODE: Let's have this

18 marked.

19 (A financial statement was

20 marked as Plaintiff's Exhibit

21 5 for identification, as of

22 this date.)

23 Q Now, I'm not going to mark this

24 exhibit but it is a document which

25 appears to be a bill from Marks Paneth &

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2 Shron. It appears to have generated in  
3 or about March 31, 2002. It suggests a  
4 series of billing -- I'm sorry August  
5 28, 2002 is the date that invoice number  
6 103442 was issued. And it reflects  
7 certain numbers. Does that refresh your  
8 recollection that the monies paid in  
9 2006 were originally billed in 2002 as  
10 to that amount?

11 A Yes.

12 Q It was billed in 2002?

13 A It appears so.

14 Q So it's fair to say then that the  
15 monies paid in 2006 have been  
16 outstanding for four years?

17 A It appears so, yes.

18 MR. TRAUB: Just for  
19 clarification, when you say,  
20 "monies," you mean \$15,000?

21 MR. HAYWOODE: Whatever is  
22 reflected in the document.

23 MR. TRAUB: Since the document  
24 is not marked as an exhibit I  
25 just wanted you

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2 item 6220. Do you see those items?

3 A Yes.

4 Q Now, the first item is reported  
5 as an adjustment journal entry and a  
6 reclassification; is that correct? It's  
7 in that column, both items?

8 A Yes.

9 Q And \$82,909 is reported as a  
10 management consultant fee; is that  
11 correct?

12 A Yes.

13 Q And then in a second column  
14 \$82,909 is reported as an audit expense;  
15 is that correct?

16 A A credit to audit expense.

17 Q So that you're saying that you  
18 credited the audit expense account which  
19 is to say that you removed it from the  
20 audit expense account?

21 A Correct, where it didn't belong.

22 Q It didn't belong there?

23 A No.

24 Q And then you put it in the  
25 management consulting column?

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2 to --

3 MR. HAYWOODE: Sure, I  
4 acknowledge your point, Darren.

5 MR. TRAUB: Thank you.

6 MR. KELLY: I'm sorry I was  
7 reading the document during that.  
8 You were saying?

9 MR. TRAUB: Well, I was just  
10 saying because the document is  
11 not marked as an exhibit the term  
12 monies is just the \$15,000.  
13 That's what the witness was  
14 testifying about.

15 MR. KELLY: Okay.

16 Q Now, I direct your attention,  
17 sir, to Plaintiff's 5 which is a  
18 document generated by Marks Paneth &  
19 Shron; is that correct?

20 A Yes.

21 Q I direct your attention to  
22 account number 6210 which appears twice  
23 in the column at the bottom. I'm sorry,  
24 is it twice or three times? I'm sorry,  
25 they're two different items, 6204 and

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2 A That's correct.

3 Q Did you propose a journal entry  
4 for that change?

5 A Yes.

6 Q Was the general ledger changed by  
7 Dalton Management?

8 A I don't know.

9 Q You testified before that it was  
10 essential that these changes be  
11 generated through Dalton Management so  
12 that in the next year your books and  
13 your financial statement and the general  
14 ledger would all be on the same page,  
15 sort of speak; is that correct?

16 A That's correct but you have to  
17 understand the process if you don't go  
18 back to prior general ledgers. If he  
19 should have made these entries I  
20 wouldn't be aware if he did or didn't.  
21 We work off the trial balance. We do  
22 not make original entries. We do not do  
23 bookkeeping.

24 Q But we do know that when the  
25 Cameron, Pryce & Griffiths got to them

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